IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.486 OF 2006
WITH
CIVIL APPLICATION NO.603 OF 2006
WITH
CIVIL APPLICATION NO.604 OF 2006

Rakesh Murarilal Agarwal. ..Appellant.

V/s.

Laxmanprasad Murarilal Agarwal. ..Respondent.

Mr.Mohan A.Dharmaraj for appellant.

Mr.H.J.Lulia for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 17, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.Lulia waives notice for respondent.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. Perused the documents on record. After going through the documents on record, prima facie, I find substance in the stand taken on behalf of the

appellant that the effect of the order passed by the Lower Court is one of passing mandatory order in the fact situation of the present case. This plea is canvassed on the basis of documents, which are already on record and were relied upon by the repondent/plaintiff before the lower Court. In that, declaration/affidavit which is jointly signed by all the family members dated 3rd January, 1992, indicates that Shop No.7 and Room No.1 respectively were to remain in joint occupation of plaintiff, defendant and their parents. The circumstances, in which the partnership deed came to be executed between the respondents and father who expired in 2004 has been doubted by the appellant. Suffice it to observe that if the case of the appellant that the appellant was in joint occupation of the shop No.7 and room No.1 is to be accepted, as it appears from the contents of the joint declaration/affidavit executed by the family members on 3rd January, 1992, it necessarily follows that the appellant alongwith his parents and respondent was in joint occupation and possession of the residence and business. In that case, ad-interim order will result in passing of mandatory order against the appellant at this interlocutory stage. This aspect of the matter has been clearly overlooked by the Court below.

6. Indeed, Court below has recorded the reasons, which run into about two pages for granting ad-interim relief. The sole basis on which the lower Court has proceeded to grant ad-interim relief is on accepting the stand of the respondent/plaintiff that he is the sole-proprietor of the business after the death of father and that several documents have been produced by the plaintiff that he is in control of the business. Essentially on this finding, the Court below proceeded to grant ad-interim relief. Even for granting ad-interim relief, which will be of drastic nature qua the Appellant, it was necessary for the lower Court to advert to the case made out by both sides and deal with that contention by recording reasons by analysing the documents on record. The order under appeal has not dealt with the matter in this manner, for which reason, the same will have to be set aside. The impugned order records that the Notice of Motion is made returnable on 21st July, 2006. It will be open to the Trial Court to consider passing of ad-interim order on that date, if so advised, when the parties will appear before it and argue the matter either for ad-interim relief or for final disposal of the Notice of Motion. This appeal disposed of on the above terms. All question are

left open.

7. The Court below will decide all the questions on its own merits in accordance with the law, without being influenced by the observations made in the impugned order or for that matter the present order.

8. Civil applications disposed of with liberty to the applicant to take recourse to such substantive remedy as permissible by law.

9. Parties may file affidavit, if so advised, even for the purpose of consideration of ad-interim relief.

10. It is made clear that the lower Court is likely to consider prayer for ad-interim relief on 21st July, 2006, the appellant shall not precipitate the matter or interfere with the day to day business activities conducted in Shop No.7 and Room No.1.